

Our Ref: AO:EJ:260119

Your Ref:

9 March 2026

Jack Turner

By email: jack.turner@planning.nsw.gov.au

Dear Mr Jack

DA92/97-Mod-8 – Extending the life of the Mount Pleasant coal mine
Submitters: Denman Aberdeen Muswellbrook Scone Healthy
Environment Group Inc ('DAMSHEG') and Wendy Wales

1. We act for DAMSHEG and Ms Wendy Wales with respect to the above application by MACH Energy. This letter is provided as an addendum to the submission of Wendy Wales. It also serves as a separate submission on behalf of DAMSHEG.
2. As you would be aware, MACH Energy is currently appealing a decision by the full court of the NSW Court of Appeal overturning approval of the Mount Pleasant Optimisation Project (**Optimisation Project**) in the High Court of Australia.
3. On behalf of our clients, we submit that MACH Energy's application DA92/97-Mod 8 (**the Application**) not be accepted, and should be refused, for the following reasons:
 - 3.1. The Court proceedings for the Optimisation Project are still on foot with a hearing yet to take place, and determination of the Application would subvert that legal process; and
 - 3.2. The Minister cannot reasonably be satisfied that the Application is 'substantially the same as the original development' (as modified), as is required by section 4.55(2)(a) *Environment and Planning Assessment Act 1979* (**EPA Act**) read together with the transitional provisions of s75W. In these circumstances, the Minister, and the Department as his delegate, does not have power to approve the Application;

- 3.3. The application is in fact a Development Application and it cannot be determined without the mandatory four week public exhibition process;
- 3.4. The Net Zero Commission's [Coal Mining Emissions Spotlight Report | Net Zero Commission](#) makes it clear that expanded coal mines are inconsistent with the State's Net Zero targets, and the NSW *Climate Change (Net Zero Future) Act 2023* (**Climate Change Act**) makes it clear that it prevails to the extent of any inconsistency.
4. With respect to this Application, and in particular Point 3.4 above, our clients refer to and rely upon the **enclosed** report by the Hon John Basten KC.¹

The Modification Application

5. The form and content for a modification application is specified by the Environmental Planning and Assessment Regulations 2021 (**EPA Regulations**).² There are additional requirements for the modification of State Significant Development including the requirement to submit a modification report.³
6. As required by the EPA Regulations, the application must also include 'an undertaking that the modified development will remain substantially the same as the development originally approved'.⁴
7. The consent authority may reject a development application where the application does not contain the required information and documents, or the Planning Secretary considers the application is incomplete.⁵
8. The Application would alter essential features of the mine (as approved and as modified by Mod 4). The increase and its impacts are discussed in detail below.
9. Any undertaking that the modified development will remain substantially the same cannot reasonably be given, nor can the Minister reasonably be satisfied that the development is substantially the same. Accordingly, the Application must be refused on the following bases:
- 9.1. the Application should have been rejected within 14 days of receipt, in accordance with clause 39 of the EPA Regulations as it is not a valid modification application;
- 9.2. the Minister does not have the power to determine the Application as a modification under s4.55 of the EPA Act, as he does not have before him a valid application for modification of a development consent;

¹ [Basten Report MAIN](#)

² EPA Regulations, Part 5.

³ EPA Regulations, cl 99(2) and see also the 'State Significant Development Guidelines – preparing a modification report' at <https://www.planning.nsw.gov.au/sites/default/files/2023-03/ssd-guidelines-preparing-a-modification-report.pdf>

⁴ EPA Regulations, cl 100(g).

⁵ EPA Regulation, cl 39(b) and (c).

- 9.3. the Minister cannot reasonably be satisfied that the consent as modified relates is the same or substantially the same development as the development for which consent was originally granted, as required by s4.55.

Undermining the judicial process through the modification

10. We are concerned that the Proponent is seeking to modify the consent before the outcome of the Court proceedings. The Proponent's letter of 9 October 2025 in support of its Application states:

"The recent NSW Court of Appeal judgment referred to above creates uncertainty regarding the validity of Development Consent SSD-10418 and the future of the Mount Pleasant Operation past the end of the currently approved mining period under Development Consent DA 92/97."

11. In fact, the Court of Appeal's decision was not uncertain. It found that the expansion of the mine was unlawful for failure to consider local climate impacts generated by the expanded mine proposal. The matter was remitted back to the Land and Environment Court for a determination as to whether it was possible to validate the Optimisation Project via conditions.
12. Instead of following that process, MACH Energy lodged an appeal to the High Court, and the Minister chose to make a submitting appearance in those proceedings (meaning that he does not wish to be heard).
13. It was this course, taken by MACH alone, that has created uncertainty for the Proponent on any decision that might be made in the future regarding the expansion of its mine. The Minister should not approve expansion of the mine beyond 22 December 2026 to provide certainty to a proponent that has chosen a path that is uncertain.
14. Further, the Application, if approved, would predetermine the effect of any decision by the High Court of Australia, because it would allow the expanded mine to go ahead even if MACH Energy is unsuccessful in its appeal. The Minister has lodged a submitting appearance in the Court proceedings, and should now await the decision of the High Court before making any new decision on the expansion of the mine.

The relevant test

15. For the Minister to grant a modification to a consent under section 4.55(2) of the EPA Act, the precondition in section 4.55(2)(a) must be satisfied:

4.55 Modification of consents – generally (cf previous s 96)

...

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which

consent was originally granted and before that consent as originally granted was modified (if at all)...

16. The comparison required by s 4.55(2)(a) is that between the development as modified and the development as it was originally approved.
17. In assessing whether the development proposed by a modification is 'substantially' the same, a comparison may be made of:
 - 17.1. The '*material and essential features*' of the two developments: *Moto Projects (No 2) Pty Ltd v North Sydney Council* 106 LGERA 298; [1999] NSWLEC 280 (**Moto Projects**) at [55], [56] and [58]; *Arrage v Inner West Council* [2019] NSWLEC 85 at [26]; *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8.10
 - 17.2. Not only the physical features but also the qualitative and quantitative features of the developments in their proper contexts, including the circumstances in which the development consent was granted (*Moto Projects* at [55]).
 - 17.3. The consequences, such as the environmental impacts, of carrying out the modified development compared to the originally approved development: *Moto Projects* [62].

Comparison of development approved (as at MOD4) to that proposed by the Application

18. A comparison of the approval (as modified) to the Application illustrates significant changes to the development. This is demonstrated by:
 - 18.1. **The proposal increases the amount of coal extracted per annum.** This will result in millions of tonnes of coal over the life of the mine, including more coal post-2030 when major reductions in emissions will be required to stay within the 1.5°C carbon budget.⁶
 - 18.2. **The extension of the life of the mine to 2032, which will have different social and economic implications** for the community; and
 - 18.3. **The mining footprint is different** involving a new pit in essence so that there would be two mine pits, and two voids, as a result of the Application.
 - 18.4. **The modification will have additional and increased environmental impacts** including: the impacts of cutting into the visually significant Castlerock ridge; road changes; the impacts of additional extraction and surface area such as noise, dust, water usage, emplacement heights, vehicle and train movements.

⁶ Climate Targets Panel, "*Shifting the Burden: Australia's Emissions Reduction Tasks Over Coming Decades*" (Report, March 2021), available at <https://www.climatecollege.unimelb.edu.au/files/site1/docs/%5Bmi7%3Ami7uid%5D/Climate%20Targets%20Panel%20Report%20-%20March%202021.pdf>.

Importantly, since the mine was approved in 1999, a new species of lizard, *Delma vescolineata* was discovered on site, and a new scheme of Biodiversity Offsetting policies and assessment methods have been implemented.

19. The quantity of coal to be extracted, the life of a mine, and the number of pits are fundamental elements of a mining application and approval conditions.

A. The extraction of additional coal over the life of the mine will have climate impacts in circumstances where major reductions in emissions will be required post-2030 to stay within the 1.5°C carbon budget.

20. The state of the evidence around climate change and the urgent need for climate action has changed considerably since the project was originally approved in 1999, and even since it was modified in 2018.
21. The *Climate Change (Net Zero Future) Act 2023 (Climate Change Act)* contains specific targets to reduce greenhouse gas emissions in NSW by 2035 by 75%. A modification of an existing coal mine to allow increased coal production is inconsistent with the objective of the Climate Change Act to pursue efforts to limit temperature increases to 1.5°C.
22. Similarly, at the latest international meetings on the Paris Agreement at COP28, countries including Australia have agreed to transition from fossil fuels to ensure global temperatures aim to keep within the 1.5°C. The Global Stocktake from COP28 notes that 2023 is set to be the warmest year on record and impacts of climate change are rapidly accelerating.⁷ It emphasises “the need for urgent action to keep the 1.5°C goal within reach and to address the climate crisis in this critical decade” to address the implementation gap that is discussed below. Further it recognises the need for “deep, rapid and sustained reductions in greenhouse gas emissions” including “accelerating efforts to phase-down unabated coal power”, and “transitioning away from fossil fuels in energy systems, in a just and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science.”
23. The extraction of additional coal will significantly increase the Scope 1, 2 and 3 CO₂-e emissions on top of what is already approved. This is a substantial addition at a time when international institutions and agreements as noted above, have called for decreases in production of fossil fuels every year between 2020 and 2023 to stay within Paris Agreement goals.⁸

'To be consistent with limiting warming to 1.5°C, global coal, oil, and gas production would have to decrease by around 11%, 4%, and 3%, respectively, each year between 2020 and 2030. However, governments are collectively projecting an increase in global oil and gas production, and only a modest decrease in coal production, from 2020 onwards (as shown by the

⁷ https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf

⁸ SEI, IISD, ODI, E3G, and UNEP, 'The Production Gap: 2021 Report' https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf, 15.

"countries' plans and projections" pathways in Figure 2.2). By 2030, this would lead to 240% more coal, 57% more oil, and 71% more gas than consistent with the median 1.5°C-warming pathway, and to 120% more coal, 14% more oil, and 15% more gas than consistent with the median 2°C-warming pathway.'

24. The updated 2023 Production Gap Report⁹ states that Governments in aggregate still plan to produce more than double the amount of fossil fuels in 2030 than would be consistent with limiting warming to 1.5°C, highlighting that Australia is increasing its coal production instead of declining. It recommends a total phase-out of coal production and use by 2040 given the risks of CCS and CDR.
25. Similarly, the International Energy Agency has recommended in its latest roadmap that more action is needed to limit global warming to 1.5°C.¹⁰ It stated that in updated net zero scenarios, clean energy capacity drives fossil fuel demand 25% lower by 2030 reducing emissions by 35% and by 80% by 2050. As a result, no new coal mines, mine extensions or new unabated coal plants are required. This is consistent with leading climate scientists and policy makers such as Professor Will Steffen and John Hewson AM, have highlighted the need for: 18 fossil fuels projects to be rapidly phased out post-2030, and current net zero targets to be brought forward from net zero by 2050 to net zero by 2035, in order to limit global warming to 1.5°C.

B. The proposed 6-year extension to the life of the mine materially changes the development

26. Extending the life of the mine will have serious social impacts on the local community and the ability of that community to undergo the cultural renewal required to restore vibrancy and agricultural activities to the community post mining. In particular, the Muswellbrook community is already experiencing significant pollution issues with the town exceeding 24-hour average and annual average for air quality for PM2.5 concentrations.¹¹ This is in an area that is more vulnerable to health impacts than the general population of NSW so the impact of increased mining is significant.¹²
27. To further extend the life of the mine into the 2030s will also create different economic impacts compared to when the mine was originally approved in

⁹ SEI, IISD, ODI, E3G, and UNEP, 'The Production Gap: 2023 Report'

<https://productiongap.org/2023report/#2023downloads>

¹⁷ <https://www.iea.org/news/the-path-to-limiting-global-warming-to-1-5-c-has-narrowed-but-clean-energy-growth-is-keeping-it-open>

¹⁰ Climate Targets Panel, "Shifting the Burden: Australia's Emissions Reduction Tasks Over Coming Decades" (Report, March 2021),

<https://www.climatecollege.unimelb.edu.au/files/site1/docs/%5Bmi7%3Ami7uid%5D/Climate%20Targets%20Panel%20Report%20-%20March%202021.pdf>; Climate Council, "Mission Zero: How Today's Climate Choices Will Reshape Australia" (2023)

[https://www.climatecouncil.org.au/resources/missionzero/#:~:text=The%20Climate%20Council%20 reaffirms%20that,a%20decent%20chance%20of%20success; Australian Academy of Technological Sciences and Engineering, https://www.atse.org.au/news-and-events/article/australias-leading-engineers-and-technologists-call-for-net-zero-by-2035/.](https://www.climatecouncil.org.au/resources/missionzero/#:~:text=The%20Climate%20Council%20 reaffirms%20that,a%20decent%20chance%20of%20success; Australian Academy of Technological Sciences and Engineering, https://www.atse.org.au/news-and-events/article/australias-leading-engineers-and-technologists-call-for-net-zero-by-2035/)

¹¹ Mount Pleasant Optimisation Project, Human Health Assessment, p 17.

¹² Mount Pleasant Optimisation Project, Human Health Assessment, p 12.

1999. The International Energy Agency has stated that '[a]s things stand, demand for fossil fuels is set to remain far too high to keep within reach the Paris Agreement goal of limiting the rise in average global temperatures to 1.5 °C. This risks not only worsening climate impacts after a year of record-breaking heat, but also undermining the security of the energy system, which was built for a cooler world with less extreme weather events.'¹³ The NSW Treasury has noted that a '[w]hile it is clear the NSW Budget is sensitive to differences in global demand for coal...a slow and disorderly transition to renewable energy could pose an even more significant risk to the fiscal outlook'.¹⁴

28. Compounding these impacts, the local community is currently experiencing pressures in access to affordable housing and provision of local health services, which the proposed 6-year extension is likely to exacerbate.

C. The mine now involves an additional pit for mine production

29. The mine plan proposed now involves two pits, the Northern and Southern Pit. This is quite different to the development approved as modified that currently only operates through the Southern Pit. There is a substantial change in impacts associated with the mining advancing west into the North Pit as opposed to the existing approved pit that only covers the South Pit up until 2026. In particular, rehabilitation of a second pit is quite different to the rehabilitation of the one existing pit.
30. The Application proposes to leave two mining voids post rehabilitation instead of one. With the projected changes in coal demand post 2030, there is a real chance of long-term impacts on the viability of the mine over the longer term and therefore risks associated with rehabilitation objectives being achieved. To allow a second pit in these circumstances needs significant consideration.

D. The modification will have additional and increased environmental impacts

31. The increased environmental impacts of the modification application in many ways reflect the environmental impacts currently being considered by the Land and Environment Court in relation to the Optimisation Project which covers much of the same land area as this modification application.
32. The Optimisation Project received some 223 public submissions.¹⁵ The public and authorities raised concerns regarding: air quality; noise; blasting; water

¹³ <https://www.iea.org/news/the-energy-world-is-set-to-change-significantly-by-2030-based-on-today-s-policy-settings-alone>; see also <https://www.iea.org/news/the-path-to-limiting-global-warming-to-1-5-c-has-narrowed-but-clean-energy-growth-is-keeping-it-open>.

¹⁴ NSW Treasury, 'The sensitivity of the NSW economic and fiscal outlook to global coal demand and the broader energy transition for the 2021 NSW Intergenerational Report' (May 2021) https://www.treasury.nsw.gov.au/sites/default/files/2021-05/2021_igr_trp_-_the_sensitivity_of_the_nsw_economic_and_fiscal_outlook_to_global_coal_demand_and_the_broader_energy_transition_for_the_2021_nsw_intergenerational_report.pdf, 31.

¹⁵ See the 'Submissions Report – Mount Pleasant Optimisation Project' and the written submissions at <https://www.planningportal.nsw.gov.au/major-projects/projects/mount-pleasant-optimisation-project>

resources; ecology; Aboriginal Heritage; Historic Heritage; Transport; Visual and Landscape Character; Social and Community Infrastructure; Economics; Hazards and Risks; Human Health; GHG Emissions; Agriculture and Land Resources.

33. For example, like the Optimisation Project, the modification application involves additional visual impacts including cutting into the visually significant ridgeline as well as the impacts associated with the changes to the Northern Link Road. These impacts are substantially different to the development as modified.
34. Importantly, since the mine was originally approved a new species of lizard, *Delma vescolineata* has been found on site. Very little, even its conservation status, is known of the species. Any expansion of mining area should not proceed until the impact on this species can be determined and mitigated. Only six populations of the species have been identified, one of which includes the site.
35. Further, the current NSW Biodiversity Policies and assessment methods were not applied during the original mine assessment and approval process. We note that in the Scoping Report, Table C1, the Proponent proposes a biodiversity assessment in relation to the "life extension of operations and refined Northern Link Road alignment". This appears to exclude an assessment of the additional surface area to be impacted by virtue of the Application.
36. The Proponent should not be allowed to continue to avoid the application of these important policies through a staged modification process.

The Application should not be accepted

37. In light of the above, the Application is clearly not 'substantially the same' as that originally approved, and the Minister cannot accept and assess the application. It is also development that is inconsistent with NSW achieving its legislated net zero targets, and therefore unlawful.
38. It is imperative that the scale of additional environmental impacts are thoroughly examined, including through a full public consultation process.
39. We urge the Department to recommend refusal until such time as the court proceedings initiated by MACH Energy have reached their conclusion.

Yours faithfully

Johnson Legal Pty Ltd



Elaine Johnson
Director